

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI (EASTERN DIVISION)**

| | | |
|-------------------------------|---|-----------------------|
| TAMIA BANKS, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| COTTER CORPORATION, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | No. 4:20-cv-01227-JAR |
| COTTER CORPORATION, (N.S.L.), |) | |
| |) | |
| Third Party Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| MALLINCKRODT LLC, et al., |) | |
| |) | |
| Third-Party Defendants. |) | |
| |) | |

PLAINTIFFS' SHOW CAUSE AND STATUS REPORT

COME NOW Plaintiffs Tamia Banks, *et al.*, by and through their undersigned counsel, and pursuant to Court Order (ECF 167) hereby inform the Court as follows:

1. On October 5, 2023, the date of Plaintiffs' filing deadline, Plaintiffs were ready to file their Responses in Opposition to Defendants' multiple Motions to Dismiss and Strike in the above-captioned litigation. *See* ECF 153-162.

2. Since the commencement of the Mallinckrodt Bankruptcy Case, counsel for Plaintiffs and Defendant Mallinckrodt LLC have been negotiating and discussing the automatic stay as it applies to any claims of Plaintiffs which survived the first Mallinckrodt bankruptcy case. In fact, Plaintiffs, Defendant Mallinckrodt, and Defendant Cotter Corporation have each retained and consulted with bankruptcy counsel, who were also involved in the analysis of the automatic

stay and its implications.

3. After much deliberation and discussion involving both litigation and bankruptcy counsel, Plaintiffs and Defendant Mallinckrodt LLC reached an agreement in principle to enter into a stipulation to lift the stay in order for the Parties to complete briefing, and for this Court to rule on, Defendants' Motions to Dismiss Plaintiffs' Complaint and Motions to Strike. Said stipulation was being drafted by counsel for Defendant Mallinckrodt LLC.

4. On the afternoon of October 5, 2023 (the deadline to file Plaintiffs' Oppositions to Defendants' Motions), Defendant Mallinckrodt LLC told Plaintiffs it had changed its mind; it would *not* move forward with the agreed-upon stipulation which would have allowed filing of Plaintiffs' briefs. *See* October 5, 2023 Correspondence, attached hereto as Exhibit 1. This was despite Mallinckrodt's indication earlier that same day that the stipulation would indeed be filed. Ex. 1.

5. With the filing deadline in a number of hours, Plaintiffs' counsel was obviously frustrated but had to make a decision as to their best course of action so as to not inadvertently violate 11 U.S.C § 362 and/or prejudice Defendants. Plaintiffs consulted with their bankruptcy counsel and concluded that it was possible the briefs and subsequent court ruling(s) could affect Mallinckrodt's rights as a Defendant in this case. Therefore, Plaintiffs concluded it was not prudent to file their Responses in Opposition to the Defendants' Motions because of the automatic stay. So Plaintiff and Mallinckrodt jointly prepared and filed their Notice of Automatic Bankruptcy Stay and Status Report. *See* ECF 165.

6. Plaintiffs' Responses in Opposition to Defendants' Motions to Dismiss and Strike¹ are attached hereto as Exhibits 2-8. These filings were prepared and ready to file on October 5,

¹ As well as a Motion to Exceed Page Limitations for the Cotter-related briefing.

2023. Should the Court deem these filings to *not* violate the automatic stay imposed by 11 U.S.C § 362, Plaintiffs will gladly file same (or are agreeable to having the Court file them instantler).

WHEREFORE, Plaintiffs submit the above pursuant to the Court's November 8, 2023 Order (ECF 167) and await the direction of the Court.

Date: November 14, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all counsel of record via this court's ECF/PACER electronic filing notification system on November 14, 2023.

/s/ Tanner A. Kirksey